

Rule by Rule Summary

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

The proposed amendments to R12-15-701 include the deletion of two definitions of terms that are no longer used in the rules, the addition of six definitions and the modification of one definition.

The definitions of the terms "existing municipal provider" and "new municipal provider" are being deleted from the definition section because these terms were only used in a prior version of a rule that is no longer effective as of October 1, 2007. See Notice of Final Rulemaking, 13 A.A.R. 1394, April 20, 2007. Because the terms no longer appear in any rule language, there is no need to define them.

A definition of the term "ACC" is being added to the definition section so that the various references to the Arizona Corporation Commission throughout the rules can be abbreviated.

Two definitions are being added to address a new concept that is being added to the rules. As required by A.R.S. § 45-576(H), the Department is proposing to amend R12-15-704 and R12-15-710 to provide for a reduction in water demand for an application for a certificate of assured water supply for a subdivision that is enrolled as a member land in the Central Arizona Groundwater Replenishment District ("CAGRD") or for a designation of assured water supply if a gray water reuse system will be installed that meets the requirements of the rules adopted by the Arizona Department of Environmental Quality ("ADEQ"). The Department is proposing a similar amendment to R12-15-714 with respect to an application for a designation of adequate water supply. Definitions of the terms "gray water" and "gray water reuse system" are being added to the definition section as part of these amendments. The definition of "gray water" is a reference to A.R.S. § 49-201, where the term is defined as "wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet." The definition of "gray water reuse system" is a system created for the reuse of gray water that "meets the requirements of the rules adopted by ADEQ."

The definition of "municipal provider" is being amended and a definition of "private water company" is being added to clarify that, for purposes of the Assured and Adequate Water Supply rules, those terms apply to the entities described in the definitions regardless of the sources of water supplied by them. The statutory definitions for those terms may limit their application to entities that supply groundwater. Additionally, the definition of "municipal provider" will now explicitly include special taxing districts established pursuant to Title 48,

Chapter 4 or 6 (community facility districts and domestic water improvement districts) that provide water to a subdivision. Although these entities have been included through statutory provisions, the change to the definition will clarify that these entities are considered municipal providers for purposes of the Assured and Adequate Water Supply Program.

Finally, the Department is proposing to add definitions for two terms used in the proposed amendments to R12-15-716 relating to the manner in which physical availability of groundwater is determined for an applicant that will withdraw groundwater in a basin or sub-basin from which groundwater may be withdrawn for transportation to an AMA pursuant to A.R.S., Title 45, Chapter 2, Article 8.1. "Transportation basin or sub-basin" is defined as a basin or sub-basin from which groundwater may be withdrawn for transportation to an AMA pursuant to A.R.S. Title 45, Chapter 2, Article 8.1. "Transportation volume" is defined as the volume of groundwater that a person may withdraw from a transportation basin or sub-basin for transportation to an AMA pursuant to A.R.S. Title 45, Chapter 2, Article 8.1, in an annual amount determined by the Director pursuant to A.R.S. Title 45, Chapter 2, Article 8.1.

R12-15-704. Certificate of Assured Water Supply

The proposed amendments to R12-15-704 include several additions to the rule language to address applications for certificates of assured water supply where the land that is the subject of the application is state-owned land. First, subsection (A) is being amended to allow holders of certificates of purchase of state-owned land to be included as applicants for certificates of assured water supply. Second, a new subsection, (B)(1)(d), will provide that an applicant that is the holder of a certificate of purchase issued by the Arizona State Land Department must submit as proof of ownership of the land that is the subject of the application a certificate of purchase issued by the Arizona State Land Department and evidence that the Arizona State Land Department consents to the application. Third, language is being added to subsection (C) to provide that the Arizona State Land Department may sign an application for a certificate of assured water supply for state-owned land solely for the purpose of acknowledging consent to the application, without certifying any other information in the application.

The Department is proposing to make two amendments to R12-15-704 to allow for a reduction in the estimated water demand for a subdivision enrolled as a member land in the CAGRDR if gray water reuse systems will be installed in the subdivision. First, language is being added to subsection (B) to require an applicant for a certificate of assured water supply to provide "sufficient information for the Director to determine the appropriate reduction in demand" if the subdivision is enrolled as a member land in the CAGRDR and the applicant proposes to install gray water reuse systems. Second, language is being added to subsection (E) to provide that if the subdivision is enrolled in the CAGRDR and gray water reuse systems will be installed in the subdivision, the Director shall

reduce the estimated water demand by a volume that is likely to be saved through the gray water reuse system.

Finally, the Department proposes to amend subsection (H)(1) to add an additional circumstance under which the director will classify a certificate of assured water supply as a Type A certificate. Under the current language, the director will classify a certificate of assured water supply as a Type A certificate only if all of the subdivision's estimated water demand will be met with one or more of the water sources specified in the subsection and the applicant will submit its final plat to a qualified platting authority. Under the proposed amendment, the director will classify a certificate of assured water supply as a Type A certificate if all of the subdivision's estimated water demand will be met with one or more of the water sources specified in the subsection and *either the applicant will submit its final plat to a qualified platting authority or the applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot.*

Please note that the strikethrough version of R12-15-704 shows changes to the rule that will become effective on October 1, 2007, because the Department anticipates that this Notice will be published after that date. See Notice of Final Rulemaking, 13 A.A.R. 1394, April 20, 2007.

R12-15-710. Designation of Assured Water Supply

The Department is proposing two amendments to the rule regarding application for a designation of assured water supply to allow a reduction in the estimated water demand if the applicant will serve one or more customers that will use a gray water reuse system. First, the Department proposes to amend subsection (A) to provide that an applicant for a designation of assured water supply that is seeking a reduction in the estimated water demand because one or more customers will use a gray water reuse system must include in its application sufficient information to allow the director to determine the appropriate reduction in demand. The Department also proposes to amend subsection (D) to provide that if the applicant demonstrates that it will serve one or more customers that will use a gray water reuse system, the director shall reduce the estimated water demand by the volume the director determines is likely to be saved through the gray water reuse system. Unlike an applicant for a certificate of assured water supply, it is not a requirement that the applicant show membership in the CAGRD in order for demand to be reduced because of the gray water reuse system.

R12-15-713. Water Report

The proposed amendments to R12-15-713 mirror the amendments to R12-15-704 dealing with holders of certificates of purchase issued by the Arizona State Land Department. The amendment to subsection (A) will allow a holder of a certificate of purchase of state-owned land to be included as an applicant for a water report.

The amendment to subsection (B) will require an applicant that is a holder of a certificate of purchase of state-owned land to submit as proof of ownership both a certificate of purchase issued by the Arizona State Land Department and evidence that the Arizona State Land Department consents to the application. Finally, language is being added to subsection (C) to provide that the Arizona State Land Department may sign an application for a water report for state-owned land solely for the purpose of acknowledging consent to the application without certifying any other information in the application.

R12-15-714. Designation of Adequate Water Supply

The proposed amendments to R12-15-714 mirror the amendments to R12-15-710 relating to the use of gray water reuse systems and the ability of an applicant to reduce its estimated water demand by an appropriate volume of water that will likely be saved by the utilization of a gray water reuse system by one or more of the applicant's customers.

A typographical error in 714(E) is also being corrected.

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

The proposed amendment in R12-15-715 is a correction of a typographical error. R12-15-715 deals with Designations of Adequate Water Supply, but in subsection (H), the term "assured" water supply was mistakenly put in the rule language instead of "adequate." The amendment from the word "assured" to the word "adequate" will correct this mistake.

R12-15-716. Physical Availability

The proposed amendments to R12-15-716 address three issues. The first issue relates to the manner in which physical availability of groundwater is determined for applicants that will withdraw groundwater within or outside of AMAs. The Department proposes to amend subsection (B)(3) to provide that in determining whether the applicant's withdrawals will exceed the applicable maximum 100-year depth-to-static water level, the director shall add to the projected decline in the depth-to-static water level the decline from the water demand of recorded lots that are not accounted for under any other provision in the subsection. This will require the director to take into account the water demand of recorded lots in the area that are not an existing demand, and that are not included in a determination of assured or adequate water supply. The Department believes that the water demand of such recorded lots should be taken into account in determining whether groundwater will be physically available for the applicant because the recorded lots represent an approved future groundwater use in the area. If the water demand of the recorded lots is not taken into account, approval of the

applicant's application could result in over-allocation of the groundwater supply in the area.

The second issue addressed by the proposed amendments relates to the manner in which physical availability of groundwater is determined for an applicant that will withdraw groundwater in a basin or sub-basin from which groundwater may be withdrawn for transportation to an AMA pursuant to A.R.S., Title 45, Chapter 2, Article 8.1. The Department proposes to amend subsection (B)(3) to provide that in determining whether the applicant's withdrawals will exceed the applicable maximum 100-year depth-to-static water level, the projected decline in the depth-to-static water level shall include any transportation volume (i.e., the volume of any groundwater that a person may withdraw from the basin or sub-basin for transportation to an AMA in an annual amount determined by the director pursuant to A.R.S. Title 45, Chapter 2, Article 8.1) that is not included in the application and to which certain criteria apply. Those criteria are as follows: (1) the person authorized to withdraw the transportation volume must have notified the Director in writing of the points of withdrawal; (2) the points of withdrawal for the transportation volume must either be existing wells or proposed wells that the Director determines are likely to be constructed; (3) the points of withdrawal for the transportation volume must comply with any requirements regarding the location of the points of withdrawal as set forth in A.R.S. Title 45, Chapter 2, Article 8.1; (4) the person authorized to withdraw the transportation volume must own or leases the land on which the points of withdrawal are located; and (5) the transportation volume must have an earlier priority date than any transportation volume included in the application.

The Department also proposes to add a new subsection (L) that will establish the priority date for groundwater authorized to be withdrawn for transportation to an AMA. For groundwater authorized to be transported from the McMullen Valley groundwater basin to an adjacent initial AMA pursuant to A.R.S. § 45-552 and for groundwater authorized to be transported from the Big Chino sub-basin of the Verde River groundwater basin to an adjacent initial AMA pursuant to A.R.S. § 45-555(E), the priority date is the effective date of the statutory provision authorizing the transportation. For groundwater authorized to be transported from the Butler Valley groundwater basin to an initial AMA pursuant to A.R.S. § 45-553(A), for groundwater authorized to be transported from the Harquahala irrigation non-expansion area to an initial AMA pursuant to A.R.S. § 45-554(B) and (C) and for groundwater authorized to be transported from the Big Chino sub-basin of the Verde River groundwater basin to an adjacent initial AMA pursuant to A.R.S. § 45-555(A), the priority date is the date the person authorized to transport the groundwater notifies the director in writing of the proposed point of withdrawal and provides any information required by the director to allow the director to determine the volume of groundwater that may be withdrawn for transportation.

The reason for the difference in the priority dates between the two categories of groundwater is that under the first category, the volume of groundwater that a person may transport into an AMA either was fixed at the time the statutory provision authorizing the transportation became effective or was subject to a maximum volume that was set at the time the statutory provision became effective. Thus, the Legislature obviously intended to reserve that volume of groundwater in the basin or sub-basin for transportation to an AMA beginning on the effective date of the statute. The same is not true for groundwater authorized to be transported to an AMA under the second category, because the volume of groundwater that a person may transport into an AMA pursuant to the statutes referred to in that category can expand over time based on the person's purchase or lease of additional land in the basin or sub-basin.

The third issue addressed by the proposed amendments relates to the language in subsection (C). That subsection currently provides that the director "shall" lower the maximum 100-year depth-to-static water level requirement for an adequate water supply applicant if the applicant demonstrates that groundwater is available at the lower depth and the applicant has the financial capability to obtain the groundwater at the lower depth. The Department is proposing to change the word "shall" to "may" and to limit the applicability of the provision to hard rock aquifers. The Department is proposing these changes because it believes that it is appropriate to lower the maximum 100-year depth-to-static water level only in hard rock aquifers. In hard rock aquifers, where the depth-to-static water level can be several thousand feet below land surface, groundwater may not be accessible without lowering the maximum depth-to-static water level. In other areas, lowering the depth-to-static water level would simply lead to unrestricted groundwater mining, potentially depleting the aquifer. Although lowering the maximum depth-to-static water level may be appropriate in a hard rock aquifer, it may not be appropriate in all hard rock aquifers. The Department believes that the director should have discretion to determine whether to lower the maximum 100-year depth-to-static water level in hard rock aquifers, depending on the hydrologic conditions that exist in the aquifer and the available information.

R12-15-717. Continuous Availability

There are three proposed amendments in R12-15-717. First, in subsection (B), the phrase "is groundwater" will be replaced with the phrase "will be withdrawn from a well." Additionally, the Department will delete R12-15-717(F). The change to subsection (B) ensures that an applicant proposing to withdraw any type of water from a well will have sufficient well capacity to access the water supply. The new language includes stored water recovered from a recovery well, making the language in R12-15-717(F) redundant.

Additionally, subsection (C)(4) is deleted. This subsection is being deleted because the requirement does not ensure water will be available during a drought.

Subsection 717(C) is intended to require evidence that a continuous supply of water will be available even when the supply is limited due to drought or similar factors affecting surface water supplies. Withdrawing the surface water from wells does not necessarily ensure that water will be available to serve the demands during a drought.

R12-15-718. Legal Availability

There are four proposed amendments to R12-15-718. First, the Department proposes to change all references to the Arizona Corporation Commission to "ACC" because ACC is now a defined term.

Second, the phrase "or an analysis" is being added to 718(B) to clarify that the legal availability requirements for an analysis are the same as those for a certificate or water report.

Third, a new subsection (B)(3) is being added to clarify the requirements for legal availability for a community facilities district and a domestic water improvement district.

Fourth, the Department proposes to amend subsection (D)(3), which sets forth the criteria for demonstrating legal availability if the applicant's proposed source of water is groundwater to be withdrawn in an AMA and the proposed municipal provider has a pending notice of intent to establish a new service area. Currently, subsection (D)(3)(b) requires that the applicant or the proposed municipal provider must have a permit for any wells used to establish the service area right. This provision is being amended by adding the word "new" before "wells" to clarify that a well permit is not necessary for an existing well. Also, language is being added to allow the requirement to be satisfied if the well permit is held by a previous certificate holder. This will address situations where a holder of a certificate of assured water supply with a well permit for a proposed service area well assigns the certificate to another entity prior to the establishment of the service area.

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

The Department proposes to amend subsection (A)(4), which requires the director to annually add a volume of incidental recharge to the groundwater allowance of each designated provider in the Phoenix AMA. The amendment relates to the calculation of a variance from the standard incidental recharge factor. Currently, subsection (A)(4) provides that a designated provider may apply for a variance as provided in A.R.S. § 45-566.01(E)(1), which, at the time the rule was adopted, set forth the procedure for applying for a variance from the standard incidental

recharge factor in the non-per capita conservation program required by A.R.S. § 45-566.01. As a result of legislation enacted during the 2007 legislative session, the language in A.R.S. § 45-566.01(E)(1) was deleted because the non-per capita conservation program no longer includes an incidental recharge factor. The proposed amendment to R12-15-724(A)(4) will replace the reference to A.R.S. § 45-566.01(E)(1) with language that is essentially the same as the deleted statutory language. The amendment does not change the substance of the rule.

R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits

The proposed amendment to R12-15-725, which applies to designated providers in the Tucson AMA, mirrors the amendment to R12-15-724.

R12-15-730. Assured and Adequate Water Supply Fees

The proposed amendment to R12-15-730 repeats the language in R12-15-151, which requires an applicant to pay "the actual cost of mailing and publishing any legal notice required by statute" in addition to the application fee established by R12-15-730.

R12-15-151 ("Fee Schedule") refers applicants to Article 7 for fees in the Adequate and Assured Water Supply program, and this additional reference to mailing and publishing costs will make R12-15-730 clearer. The amendment will not establish a new fee.

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

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- R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

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- R12-15-730. Assured and Adequate Water Supply Fees

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
 - a. The land has been developed for another use; or
 - b. Legal restrictions will preclude approval of the plat.
2. "ACC" means the Arizona Corporation Commission.
- ~~2.~~ 3. "ADEQ" means the Arizona Department of Environmental Quality.
- ~~3.~~ 4. "Adequate delivery, storage, and treatment works" means:
 - a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
 - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and
 - c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
- ~~4.~~ 5. "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use.
- ~~5.~~ 6. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
- ~~6.~~ 7. "AMA" means an active management area as defined in A.R.S. § 45-402.
- ~~7.~~ 8. "Analysis" means an analysis of assured water supply or an analysis of adequate water supply.
- ~~8.~~ 9. "Analysis holder" means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
- ~~9.~~ 10. "Analysis of adequate water supply" means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
- ~~10.~~ 11. "Analysis of assured water supply" means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.
- ~~11.~~ 12. "Annual authorized volume" means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
 - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is

- the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
- b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
- ~~12.~~ 13. "Annual estimated water demand" means the estimated water demand divided by 100.
- ~~13.~~ 14. "Approved remedial action project" means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
- ~~14.~~ 15. "Authorized remedial groundwater use" means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
- ~~15.~~ 16. "Build-out" means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
- ~~16.~~ 17. "CAP water" means:
- a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
- b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
- ~~17.~~ 18. "Central Arizona Groundwater Replenishment District" or "CAGRD" means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.
- ~~18.~~ 19. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
- ~~19.~~ 20. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
- ~~20.~~ 21. "Certificate" means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.
- ~~21.~~ 22. "Certificate holder" means any person included on a certificate, except the following:
- a. Any person who no longer owns any portion of the property included in the certificate, and
- b. Any potential purchaser for whom the purchase contract has been terminated or has expired.
- ~~22.~~ 23. "Certificate of convenience and necessity" means a certificate required by the ~~Arizona Corporation Commission~~ ACC, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.
- ~~23.~~ 24. "Colorado River water" means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.

- ~~24.~~ 25. "Committed demand" means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.
- ~~25.~~ 26. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
- ~~26.~~ 27. "Current demand" means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.
- ~~27.~~ 28. "Depth-to-static water level" means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.
- ~~28.~~ 29. "Designated provider" means:
- a. A municipal provider that has obtained a designation of assured or adequate water supply; or
 - b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).
- ~~29.~~ 30. "Designation means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.
- ~~30.~~ 31. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.
- ~~31.~~ 32. "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.
- ~~32.~~ 33. "Development" means either a subdivision or an unplatted development plan.
- ~~33.~~ 34. "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.
- ~~34.~~ 35. "Drought response plan" means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:
- a. An identification of priority water uses consistent with applicable public policies.
 - b. A description of sources of emergency water supplies.
 - c. An analysis of the potential use of water pressure reduction.
 - d. Plans for public education and voluntary water use reduction.
 - e. Plans for water use bans, restrictions, and rationing.
 - f. Plans for water pricing and penalties for excess water use.
 - g. Plans for coordination with other cities, towns, and private water companies.
- ~~35.~~ 36. "Drought volume" means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.
- ~~36.~~ 37. "Dry lot development" means a development or subdivision without a central water distribution system.
- ~~37.~~ 38. "EPA" means the United States Environmental Protection Agency.
- ~~38.~~ 39. "Estimated water demand" means:
- a. For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;

- b. For a designation, the sum of the following:
 - i. The Director's determination of the current demand;
 - ii. The Director's determination of the committed demand; and
 - iii. The Director's determination of the projected demand during the term of the designation; or
 - c. For an analysis, the Director's determination of the water demand for all uses included in the development.
- ~~39. "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.~~
40. "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.
41. "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.
42. "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.
43. "Gray water" has the same meaning as provided in A.R.S. § 49-201.
44. "Gray water reuse system" means a system constructed to reuse gray water that meets the requirements of the rules adopted by ADEQ for gray water systems.
- ~~43.~~ 45. "Management plan" means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.
- ~~44.~~ 46. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
- ~~45.~~ 47. "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
- ~~46.~~ 48. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
- ~~47.~~ 49. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
- ~~48.~~ 50. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
- ~~49.~~ 51. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561. means a city, town, private water company, irrigation district, or special taxing district established pursuant to A.R.S. Title 48, Chapter 4 or 6, that supplies any water for a municipal use.
- ~~50. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.~~
- ~~51.~~ 52. "Owner" means:
- a. For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
 - b. For a designation applicant, the person who will be providing water service pursuant to the designation.
- ~~52.~~ 53. "Perennial" means a stream that flows continuously.
- ~~53.~~ 54. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.

- ~~54.~~ 55. "Physical availability determination" means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
- ~~55.~~ 56. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
- ~~56.~~ 57. "Potential purchaser" means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
- ~~58.~~ "Private water company" means any entity that distributes or sells water, except:
- a. A political subdivision or an entity established pursuant to title 48, A.R.S., that is not regulated as a public service corporation by the ACC under a certificate of convenience and necessity; or
 - b. A city or town.
- ~~57.~~ 59. "Projected demand" means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider's service area and reasonably anticipated expansions of the designated provider's service area.
- ~~58.~~ 60. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
- ~~59.~~ 61. "Purchase agreement" means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.
- ~~60.~~ 62. "Remedial groundwater" means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
- ~~61.~~ 63. "Service area" means:
- a. For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider's operating distribution system for the delivery of water for a non-irrigation use;
 - b. For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or
 - c. For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.
- ~~62.~~ 64. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.
- ~~63.~~ 65. "Superfund site" means the site of a remedial action undertaken pursuant to CERCLA.
- ~~64.~~ 66. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.

67. "Transportation basin or sub-basin" means a basin or sub-basin from which groundwater may be withdrawn for transportation to an AMA, pursuant to A.R.S. Title 45, Chapter 2, Article 8.1.

68. "Transportation volume" means, with respect to an application for a determination of assured water supply or determination of adequate water supply that includes groundwater to be withdrawn in a transportation basin or sub-basin, the volume of groundwater that a person may withdraw from the transportation basin or sub-basin for transportation to an AMA pursuant to A.R.S. Title 45, Chapter 2, Article 8.1, in an annual amount determined by the Director pursuant to A.R.S. Title 45, Chapter 2, Article 8.1.

~~65.~~ 69. "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.

~~66.~~ 70. "Water report" means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

R12-15-704. Certificate of Assured Water Supply

A. An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers, affiliates and holders of certificates of purchase of state-owned land may also be included as applicants.

B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:

1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:

a. For an applicant that is the current owner, one of the following:

i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or

ii. Evidence that the CAGRDR has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application.

b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or

c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status; or

d. For an applicant that is a holder of a certificate of purchase of state-owned land, a certificate of purchase issued by the Arizona State Land Department and evidence of the Arizona State Land Department's consent to the application.

2. A plat of the subdivision;

3. An estimate of the 100-year water demand for the subdivision;

4. If the subdivision is enrolled as a member land in the CAGRDR and the applicant proposes to install gray water reuse systems in the subdivision, sufficient information for the Director to determine the appropriate reduction in demand;

4. 5. A list of all proposed sources of water that will be used by the subdivision;

- ~~5- 6.~~ Evidence that the criteria in subsections (F) or (G) of this Section are met; and
- ~~6- 7.~~ Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C. Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf. If the current owner of the land that is the subject of the application is the Arizona State Land Department, the Commissioner of the Arizona State Land Department may sign the application for the sole purpose of acknowledging consent to the application and without certifying any other information contained in the application.
- D. The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.
- E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The estimated water demand of the subdivision; If the subdivision is enrolled as a member land in the CAGR and gray water reuse systems will be installed in the subdivision, the Director shall reduce the estimated water demand by the volume the Director determines is likely to be saved through the gray water reuse system;
 2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
 3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.
- F. Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
 6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.

- G.** If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:
1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
 2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
 3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
 4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
 5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
 6. The applicant demonstrates that the requirements in subsections (F)(3) through (F)(6) of this Section are met.
- H.** Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. Type A certificate. The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) or R12-15-720(A)(2) and all of the subdivision's estimated water demand will be met with one or more of the following:
 - a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
 - b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
 - c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
 - d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
 - e. Effluent owned and served by a proposed municipal provider; or
 - f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
 2. Type B certificate. The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.
- I.** The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.
- J.** An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:

- a. A plat was recorded before 1980; or
 - b. A certificate was issued before February 7, 1995;
- 2. No changes were made to the plat since February 7, 1995; and
- 3. Water service is currently available to each lot.
- K.** A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
 - 1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;
 - 2. Water service is currently available to each lot; and
 - 3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.
- L.** An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:
 - 1. A plat for the subdivision was recorded before October 1, 2007;
 - 2. There have been no material changes to the plat according to the criteria in R12-15-708, since October 1, 2007;
 - 3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and
 - 4. Water service is currently available to each lot.
- M.** A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), (K), or (L) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J), (K), or (L) are met. Upon receiving an application pursuant to this subsection, the Director shall:
 - 1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
 - 2. Determine whether the criteria of subsection (J), (K), or (L) of this Section are met.
 - 3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.
 - 4. If the Director determines that the criteria of subsection (K) or (L) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

R12-15-710. Designation of Assured Water Supply

- A.** A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:
 - 1. The applicant's current demand;
 - 2. The applicant's committed demand;
 - 3. The applicant's projected demand for the proposed term of the designation;

4. If the applicant is seeking a reduction in the estimated water demand because one or more customers will use a gray water reuse system, sufficient information for the Director to determine the appropriate reduction in demand;
 4. ~~5.~~ The proposed term of the designation, which shall not be less than two years;
 5. ~~6.~~ Evidence that the criteria in subsection (E) of this Section are met; and
 6. ~~7.~~ Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B. An application for a designation shall be signed by:
1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
 2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- C. The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The annual volume of water physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The applicant's estimated water demand; If the applicant demonstrates that it will serve water to one or more customers that will utilize a gray water reuse system, the Director shall reduce the estimated water demand by the volume the Director determines is likely to be saved through the gray water reuse system;
 4. The applicant's groundwater allowance; and
 5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.
- E. The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
 6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.

- F. The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

R12-15-713. Water Report

- A. An application for a water report shall be filed by the current owner of the land that is the subject of the application. Holder of certificates of purchase of state-owned land may also be included as applicants.
- B. An applicant for a water report shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:
1. One of the following forms of proof of ownership:
 - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application; or
 - b. For an applicant that is a holder of a certificate of purchase of state-owned land, a certificate of purchase issued by the Arizona State Land Department and evidence of the Arizona State Land Department's consent to the application.
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. A list of all proposed sources of water that will be used by the subdivision;
 5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.
- C. Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf. If the current owner of the land that is the subject of the application is the Arizona State Land Department, the Commissioner of the Arizona State Land Department may sign the application for the sole purpose of acknowledging consent to the application and without certifying any other information contained in the application.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The estimated water demand of the subdivision;
 2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this Section.
- E. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;

2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.
- F. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.
- G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.
- H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:
1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10; and
 2. Notify the Arizona Department of Real Estate.
- I. An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.
- J. A water report is subject to the provisions of R12-15-708.

R12-15-714. Designation of Adequate Water Supply

- A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and the following:
1. The applicant's current demand;
 2. The applicant's committed demand;
 3. The applicant's projected demand for the proposed term of the designation;
 4. If the applicant is seeking a reduction in the estimated water demand because one or more customers will use a gray water reuse system, sufficient information for the Director to determine the appropriate reduction in demand;
 4. 5. The proposed term of the designation, which shall not be less than two years;
 - ~~5. 6.~~ Evidence that the criteria in subsection (E) of this Section are met; and
 - ~~6. 7.~~ Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.

- B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the fee required in R12-15-730, and provide the following:
1. The current demand of the applicant's service area;
 2. The committed demand of the applicant's service area;
 3. The projected demand of the applicant's service area for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years; and
 5. Evidence that the requirements in A.R.S. § 45-108(D) are met.
- C. An application for a designation shall be signed by:
1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
 2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The estimated water demand for the applicant's service area for 100 years; ~~and . If the applicant demonstrates that it will serve one or more customers that will utilize a gray water reuse system, the Director shall reduce the estimated water demand by the volume the Director determines is likely to be saved through the gray water reuse system; and~~
 4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.
- E. The Director shall designate the applicant ~~has~~ as having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719; and
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.
- F. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.
- G. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:
1. The designated provider's committed demand;
 2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
 3. A report regarding the designated provider's compliance with water quality requirements;
 4. The depth-to static water level of all wells from which the designated provider withdrew water;
 5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
 6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.
- B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.
- D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.
- E. The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand for the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.
- F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.

- G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an ~~assured~~ adequate water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

R12-15-716. Physical Availability

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through ~~(L)~~(M) of this Section.
- B. If the proposed source is groundwater, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
 - 1. The groundwater will be withdrawn as follows:
 - a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.
 - b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
 - 2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot developments	1200 feet below land surface

d. Dry lot developments	400 feet below land surface
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3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:

- a. The depth-to-static water level on the date of application.
- b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
- c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
 - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
 - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
 - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712; and
 - iv. The water demand of recorded lots that are not accounted for in subsections (c)(i), (c)(ii) and (c)(iii) of this Section.
- d. For withdrawals that are proposed to occur in a transportation basin or sub-basin, the projected decline shall include any transportation volume not accounted for in subsection (B)(3)(b) or (B)(3)(c) of this Section and not included in the application, to which all of the following apply:
 - i. The person authorized to withdraw the transportation volume has notified the Director in writing of the points of withdrawal;
 - ii. The points of withdrawal for the transportation volume are either existing wells or proposed wells that the Director determines are likely to be constructed;
 - iii. The points of withdrawal for the transportation volume comply with any requirements regarding the location of the points of withdrawal as set forth in A.R.S. Title 45, Chapter 2, Article 8.1;
 - iv. The person authorized to withdraw the transportation volume owns or leases the land on which the points of withdrawal are located; and

- v. The transportation volume has an earlier priority date than any transportation volume included in the application. Priority under this subsection shall be determined pursuant to subsection (L) of this Section.
- d. e. The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.
- C. The Director ~~shall~~ may lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the groundwater will be withdrawn in a hard rock aquifer and the applicant demonstrates both of the following:
1. Groundwater is available at the lower depth; and
 2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.
- D. If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:
1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
 2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.
- E. Subject to subsection ~~(L)~~(M) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:
1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
 2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal

flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.

F. Subject to subsection ~~(L)~~(M) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.
2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (F)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.

G. Subject to subsection ~~(L)~~(M) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.
2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (G)(2)(a) of this Section, calculate the percentage of

the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.

- H. Subject to subsection (I) of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:
1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
 2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.
- I. If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:
1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection (I)(3) of this Section.
 2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
 - a. The terms of a contract to obtain water to store in a storage facility;
 - b. The physical, continuous, and legal availability of the water proposed to be stored;
 - c. The presence of an existing storage facility that will be available for use for the proposed storage;
 - d. The existence of all required permits of an adequate duration; and
 - e. Whether recovery of the stored water will comply with subsection (I)(3) of this Section.
 3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
 - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
 - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.
- J. If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.

- K. In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.
- L. The Director shall assign a priority date to transportation volumes, as follows:
1. For transportation volumes authorized pursuant to A.R.S. § 45-552(A), the priority date shall be as follows:
 - a. For a city that purchased land before January 1, 1988 in the McMullen valley groundwater basin, or a city, town or private water company that purchased any of the land from that city, the priority date shall be September 21, 1991.
 - b. For a person, other than a city described in subsection (L)(1)(a) of this section, who purchased land before January 1, 1988 in the McMullen valley groundwater basin and in the same county as an adjacent initial AMA, including that person's successor in interest as defined in A.R.S. § 45-552(D), or a city, town or private water company that purchased any of the land from that person or that person's successor in interest, the priority date shall be July 17, 1994.
 2. For transportation volumes authorized pursuant A.R.S. § 45-553(A), the priority date shall be the date this state or a political subdivision of this state notifies the director in writing of the proposed point of withdrawal and proposed amount of withdrawal.
 3. For transportation volumes authorized pursuant to A.R.S. § 45-554(B) or (C), the priority date shall be the date this state or a political subdivision of this state notifies the director in writing of the proposed point of withdrawal and submits all the information required by the director to allow the director to determine the amount of groundwater that may be withdrawn for transportation pursuant to the statute.
 4. For transportation volumes authorized pursuant to A.R.S. § 45-555, the priority date shall be as follows:
 - a. For transportation volumes pursuant to A.R.S. § 45-555(A), the priority date shall be the date the city or town notifies the director in writing of the proposed point of withdrawal and submits all the information required by the director to allow the director to determine the amount of groundwater that may be withdrawn for transportation pursuant to the statute.
 - b. For transportation volumes pursuant to A.R.S. § 45-555(E), the priority date shall be September 21, 1991.
- ~~L.~~ **M.** For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:
1. The land that is the subject of the application is a member land of the CAGRD.
 2. The applicant has independently obtained the surface water supply.

3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

R12-15-717. Continuous Availability

- A. The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.
- B. If the proposed source of water is ~~groundwater~~ will be withdrawn from a well, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.
- C. If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:
 1. The projected volume to be diverted from the source is perennial at the point of diversion;
 2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
 3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies; or
 - ~~4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity to meet the applicant's estimated water demand on a continuous basis for 100 years; or~~
 - ~~5.~~ 4. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.
- D. If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:
 1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
 2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
 3. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume subject to drought.
- E. If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.

- ~~F. If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.~~
- ~~G.~~ F. If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will use will be continuously available in accordance with the terms of this Section.

R12-15-718. Legal Availability

- A. The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.
- B. If the applicant is an applicant for a certificate, ~~or a water report, or an analysis,~~ the applicant shall submit the following, as applicable:
1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the ~~proposed municipal provider,~~ stating the proposed municipal provider's intent to serve the subdivision;
 2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; ~~or~~
 3. If the proposed municipal provider is a special taxing district established pursuant to A.R.S. Title 48, evidence that the subdivision is located within the area that the district is legally authorized to serve; or
 - ~~3.~~ 4. If the proposed municipal provider is a private water company, one of the following:
 - a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by the ~~Arizona Corporation Commission~~ ACC and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the ~~Arizona Corporation Commission~~ ACC authorizes the private water company to serve water;
 - b. Evidence that the proposed municipal provider has an order preliminary issued by the ~~Arizona Corporation Commission~~ ACC authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or
 - c. Evidence that the proposed municipal provider is not a public service corporation regulated by the ~~Arizona Corporation Commission~~ ACC.
- C. If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the ~~Arizona Corporation Commission~~ ACC, or has been issued an order preliminary by the ~~Arizona Corporation Commission~~ ACC for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.

- D. If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:
1. A service area right;
 2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or
 3. A pending notice of intent to establish a new service area and all of the following apply:
 - a. The notice of intent to establish a new service area identifies the proposed subdivision,
 - b. The applicant, ~~or~~ the proposed municipal provider, or a previous certificate holder has obtained a permit for any new wells used to establish the service area right,
 - c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and
 - d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.
- E. If a proposed source of water is surface water ~~other~~ than CAP water or Colorado River water:
1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, ~~but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application,~~ the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
 2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
 - a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;
 - b. Evidence that a court has determined that the right has not been abandoned; or
 - c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
 3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.
- F. Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall

presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.

- G.** Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:
1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
 2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
 - a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
 - b. The entity provides Colorado River water to the proposed municipal provider;
 - c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and
 - d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.
- H.** If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.
- I.** If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.
- J.** If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.
- K.** If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.
- L.** If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.
- M.** If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water

for use off Indian community lands, evidence of the lease, and evidence of one of the following:

1. The proposed water supply is available under the lease for at least 100 years from any time during the year in which the applicant submits the application.
 2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:
 - a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to recover water pursuant to the long-term storage credits; or
 - b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.
- N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:
1. The lease has at least 50 years remaining in its term or the lease has at least 40 years remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and
 2. One of the following applies:
 - a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with the management goal of the AMA. For purposes of this subsection, the designated provider may demonstrate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not

consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;

- c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
- d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:
 - i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and
 - iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:

1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	4
Fourth	2
Fifth	1
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.
3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.

4. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor ~~as provided in A.R.S. § 45-566.01(E)(1).~~ by submitting a hydrologic study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated provider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider ~~if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.~~ upon such demonstration.
- B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:
 1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Tucson AMA as follows:

1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	8
Fourth	4
Fifth	2
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers before February 7, 1995, multiply 15 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Tucson AMA.
3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
4. For each calendar year of the designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Tucson AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor ~~as provided in A.R.S. § 45-566.01(E)(1).~~ by submitting a hydrologic study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated provider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider ~~if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during~~

~~the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%. upon such demonstration.~~

- B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Tucson AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

R12-15-730. Assured and Adequate Water Supply Fees

- A.** With respect to an application listed in subsection (B) of this Section, the Director shall accept or take action on the application only upon payment of the applicable fee as listed.
- B.** An applicant shall pay the following fees, as applicable:

APPLICATION	FEE (\$)
1. Certificate	3000.00 for the first 20 lots; 3.00 for each additional lot; maximum 5000.00
2. Assignment of certificate issued after effective date of this Section	None
3. Reissuance of certificate issued after effective date of this Section, pursuant to R12-15-704(G)	None

4. Assignment of certificate issued before effective date of this Section, with or without request for classification as Type A certificate	250.00 for the first 20 lots; 0.50 for each additional lot; maximum 1000.00
5. Reissuance of certificate issued before effective date of this Section, pursuant to R12-15-704(G)	250.00 for the first 20 lots; 0.50 for each additional lot; maximum 1000.00
6. Classification as Type A, for certificate issued before the effective date of this Section (not included in assignment application)	250.00 for the first 20 lots; 0.50 for each additional lot; maximum 1000.00
7. Material plat change review	250.00
8. Designation or modification of designation that includes evaluation of physical, legal, and continuous availability or consistency with management goal	1000.00 for the first 1000 acre-feet; 0.50 for each additional acre-foot; maximum 10,000.00
9. Modification of designation that does not include evaluation of physical, legal, and continuous availability or consistency with management goal	500.00
10. Water report	900.00 for the first 20 lots; 2.00 for each additional lot; maximum 2000.00
11. Analysis	7500.00
12. Physical availability determination	5000.00

C. In addition to the fees listed above, the applicant shall pay the Department the actual cost of mailing and/or publishing any legal notice required by statute.

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